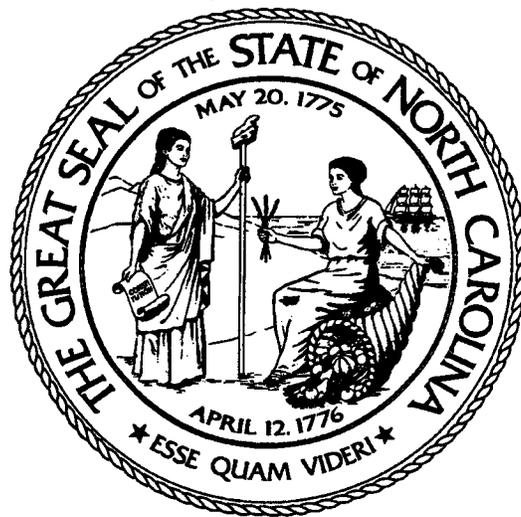


**LEGISLATIVE  
RESEARCH COMMISSION**

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**EMPLOYMENT PROCEDURES**



**REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27601-1096



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on the Model Employment Termination Act and alternative approaches to discrimination in employment. The report was prepared by the Legislative Research Commission's Committee on Employment Procedures pursuant to G.S. 120-30.17(1).

Respectfully submitted,

  
\_\_\_\_\_  
Daniel T. Blue, Jr.  
Speaker of the House

  
\_\_\_\_\_  
Marc Basnight  
President Pro Tempore

Cochairmen  
Legislative Research Commission





1993-1994

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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Marc Basnight, Cochair

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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the Model Employment Termination Act and alternative approaches to discrimination in employment would have been authorized by Part II, Sections 2.1(3) and (22) of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider House Bills 54 and 384 in determining the nature, scope and aspects of the study. The relevant portions of the 2nd Edition of House Bill 1319 are included in Appendix A. A copy of House Bills 54

and 384 are included in Appendix B. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its labor and personnel area under the direction of Senator Austin Allran. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters.)

The Committee was chaired by Senator Wib Gulley and Representative Annie Kennedy. The full membership of the Committee is listed in Appendix C of this report. A committee notebook containing the committee minutes and all information presented to the Committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Legislative Research Commission Study Committee on Employment Procedures convened for a total of seven meetings: January 31, March 31, April 25, August 26, October 14, November 18, and December 19, 1994. The Committee's primary effort during this series of meetings has been to gather general subject matter information in order to identify and define the specific issues, concerns, and potential courses of action that should be addressed with regard to alternative approaches to discrimination in employment and the use of the Model Employment Termination Act or similar provision in the State.

### January 31, 1994 Meeting

The Committee held its initial meeting and focused on organizational matters and general information. Upon reviewing House Bill 54 which requested continuation of the examination of alternative approaches to deal with discrimination in employment and House Bill 384 which authorized the study of the Model Employment Termination Act, the Committee heard a summary and overview of the two substantive areas assigned for its study.

Committee staff explained that the study of alternative approaches to deal with discrimination in employment began in the 1991 General Assembly with a study committee which was co-chaired by Representative Kennedy. That committee held a total of nine meetings and two public hearings to collect information and hear concerns regarding the following:

- (1) The need for the State of North Carolina to take responsibility in the form of a state fair employment practices law for addressing employment discrimination in the private sector workforce; and
- (2) Issues relative to the provisions in and the grievance appeals process under the State Personnel Act.

A copy of that committee's final report to the 1993 General Assembly was provided to the present Committee to give a fuller flavor of the issues and concerns.

Regarding the Model Employment Termination Act, the Committee was informed that the model act is seen as a trade-off between employees and employers. Employees receive protection from firings without good cause while employers get a limit to the damages that they would pay if found to have fired someone without good cause. The model act was adopted in 1991 after more than three years of study by the Uniform Law Commissioners. Ten states--Delaware, Hawaii, Iowa, Maine, Massachusetts, Nevada,

New Hampshire, New York, Oklahoma, and Pennsylvania--had bills introduced that were based wholly or in part on the Model Employment Termination Act.

The Committee made a determination as to how best to proceed in examining the two distinct, yet somewhat related substantive subject areas.

### March 31, 1994 Meeting

The Committee began its investigation of information on the Model Employment Termination Act by focusing on:

- (1) The status of employment law in North Carolina with regard to employment-at-will;
- (2) Concerns with current conditions of the law from both management and employee points of view;
- (3) An in-depth explanation of the provisions in the Model Employment Termination Act and the reasons behind the inclusion of particular elements; and
- (4) The potential advantages and disadvantages of the model act for the State.

The North Carolina Bar Association was asked to provide the names of two attorneys to speak on current North Carolina law regarding employment-at-will. Mr. Bruce Clark and Mr. Victor Boone were recommended to present the employer and employee perspectives on the issue.

Mr. Clark, the first of several speakers, addressed the employer viewpoint. He indicated that the view of the majority of North Carolina employers is in opposition to the Model Employment Termination Act. In its present form, it does not eliminate the vagueness and unpredictability of public policy types of claims against employers while it would increase the avenues available for employees to litigate their discharges.

Mr. Clark outlined the following as other items that should be considered before reaching a final conclusion as to the usefulness and appropriateness of the Model Employment Termination Act for North Carolina:

- (1) The question of whether additional restrictions on employers are needed or advisable;

- (2) The potential adverse response of employers to such additional restrictions through the use of overtime and temporary employees and the corresponding indirect impact on hiring practices;
- (3) The likelihood of thousands of additional litigation or arbitration cases being filed against employers although the Model Employment Termination Act is designed to preclude the large, aberrant multi-million dollar cases of wrongful discharge; and
- (4) The possible anti-competitive effect in North Carolina as far as making the State competitive in attracting new industry, if it became only the second state to adopt the Model Employment Termination Act.

Mr. Victor Boone gave the Committee a perspective more geared toward the employee or plaintiff. After an exhaustive study on and presentation of the measure in 1990, he concluded at that time that, despite the use of the at-will doctrine, North Carolina was not yet ready to adopt nor did it need to adopt a law that was comparable to the Model Employment Termination Act.

Although Mr. Boone did not state a definite position either for or against the adoption of the Model Act in North Carolina, he pointed out that:

- (1) The measure has aspects that are good for employers as well as some that are not as good for employees, and vice versa;
- (2) With very few exceptions to the employment-at-will doctrine, many cases do not have a remedy under current North Carolina law;
- (3) Even in the protected categories, it is difficult for employees to find lawyers who have handled very many cases; and
- (4) Most blue-collar workers cannot afford to file a law suit because it is very time-consuming and expensive, with a very slim likelihood for success.

Mr. John McCabe, Legislative Director and Legal Counsel of the National Conference of Commissioners on Uniform State Laws, briefly shared an overview of the character, background, and role of the National Conference of Commissioners. He indicated that the need for the Model Employment Termination Act arose from the chaos which has existed for a decade and resulted from the numerous law suits which had the affect of eroding the at-will doctrine of employment in many states. The model act represents an effort to provide state governments with legislation that will prevent federal pre-emption in employment doctrines.

Mr. McCabe then explained the features of the Model Employment Termination Act and provided more detailed information as to:

- When arbitration would be used and when litigation would be used;
- How the arbitrators are selected;
- The cost of arbitration;
- Use of the at-will doctrine in other states;
- The arbitrator's determination of employer good faith in a lay-off situation;
- Usefulness of judicial review for appeal of arbitrator's award;
- The Model Act's explicit standards of good cause;
- The possible denial of unemployment benefits because of the existence of an arbitration funding based on employee misconduct;
- The Model Act's potential effect on attracting industry to the State; and
- Waivers of good cause under the Model Act.

#### **April 25, 1994 Meeting**

At its third meeting, the Committee continued its exploration of and data collection on the Model Employment Termination Act. Mr. Travis Payne, speaking on behalf of the N. C. Academy of Trial Lawyers, represented the employee point of view. He specified the just cause requirement for the discharge of an employee as the "very positive" aspect of the Model Employment Termination Act and the one that is needed in the State. Mr. Payne expressed the following two concerns:

- (1) It unequivocally extinguishes all common law claims against the employer, as well as the officers, directors and employees of the employer without limit to the type of claim. Thus, employees would no longer be allowed to file intentional infliction of emotional distress and libel and slander claims which have nothing to do with employment-at-will. The problem is compounded in that the Model Act states that there would still be the ability to raise a third-party claim although the potential parties that could be sued are absolved of any liability; and

- (2) The remedies are limited solely to back pay although the court has decided that, mere back pay did not make the employee whole. In addition, the Civil Rights Act of 1991 amended the federal anti-discrimination laws to provide for both compensatory damages, and in certain situations, punitive damages. He ultimately concluded that, while the Academy favors greater protection for workers, the Model Employment Termination Act itself is so limited in its remedies that, in many respects, workers are worse off than under the present law.

Dr. Stuart Henry, an advisor to the drafting committee and professor at Eastern Michigan University, shared his research of the past five years on the states and the Model Employment Termination Act. He informed the Committee that European industrial nations have abandoned the at-will doctrine. He cited articles which showed:

- (1) England has had an act similar to the Model Employment Termination Act for the past 20 years and an increase in the number of bills introduced in the states on termination issues from a 10-year survey;
- (2) Thirteen states with just cause bills in the legislative process; and
- (3) The Model Act would bring the total cost of employment termination cases down from \$2.2 billion to \$1.8 billion by replacing court litigation with arbitration, with the average award decreasing from \$98,000 to \$16,000 and attorney's fees dropping from \$124,000 to approximately \$3,000.

Mr. Harold Kennedy, III, a member of the North Carolina Association of Black Lawyers, raised the following points:

- (1) A number of the selling points for the META are based on premises that do not apply in North Carolina;
- (2) There have been just a few cases in the State and they have been no more expensive than any other civil action, as opposed to those in some other states where costs to bring law suits are soaring;
- (3) In dealing with just cause standards, the Model Act would flood the courts with thousands of cases, thereby clogging the system;
- (4) There has been no outcry from the N.C. Bar Association or from business to change the present system in North Carolina; and
- (5) The state court has made it clear in both the Coman and Amos cases that the courts will be looking at this issue on a case by case basis.

Ms. Patricia Stumpf appeared next before the Committee to speak of what she has witnessed first-hand of the injustice and oppression in the workplace. She chronicled the particulars of a case which she believed exemplified the unfair and legally indefensible position resulting from the at-will doctrine. Ms. Stumpf concluded her remarks by stating that human and ethical considerations need to be addressed when making laws; Given that the employment-at-will doctrine is used as a tool to render this abuse, it should be eliminated.

The final speaker, Mr. Sam Johnson, represented N. C. Associated Industries and spoke against the adoption of the Model Employment Termination Act in North Carolina, at this time, for the following reasons:

- (1) Only the state of Montana has enacted the law;
- (2) North Carolina would be competing for new jobs with states that have better employment law climates; and
- (3) An occasional abuse is not a good reason to come forward with an overbearing law.

During its concluding deliberations, the Committee discussed the idea of expanding the membership of the Committee by including one or two members representing management or labor. Interest was also expressed in reviewing copies of the bills introduced and under consideration in the other states. Members concluded that the Committee needed to look at what was being considered in other states, being careful to take into account how the differences in common law and statutes interplay with the proposed legislation.

#### August 26, 1994 Meeting

At this first meeting following the Short Session, the Committee began its examination of the issue of discrimination in employment and heard presentations from several arenas. Mr. John Champion, Assistant General Counsel at Burroughs Wellcome Company, provided the Committee with conclusions based on his years of experience in various employment law capacities and settings. He outlined that, if employment discrimination law is going to work, it must work in the workplace instead of in the courtroom; Court procedure and burdens of proof do not provide equal opportunity, but rather laws that are clear and do not interfere with the ability of a manager to get the product out of the door and that do not add a burden to business.

The trend of employers winning more court cases points to the fact that the current civil rights law is working, and suggests that there is less discrimination in the workplace now than there was even ten years ago. Mr Champion suggested that, if

North Carolina needed to consider measures in refocusing employment discrimination law, the State should consider state enforcement of those laws. Today, forty other states have state fair employment practices agencies that perform the work of the Equal Employment Opportunity Commission.

Professor Jerome Culp of the Duke University Law School outlined for the Committee a brief history on the development of the 1964 Civil Rights Act. He agreed that some kinds of discrimination have been eliminated over the past 30 years and that this is one of the reasons why there are fewer cases being filed. Professor Culp stated that the real problem is how to make the system work so that it is not too burdensome for the employer, and at the same time, provide relief for employees who are true victims of discriminations. He suggested the following possibilities:

- (1) Use of the 1964 National Labor Relations Board model as an example of how to resolve questions of today;
- (2) Having an administrative agency where people can go to present evidence and have a decision made that may or may not be appealable;
- (3) Reducing the cost of asking "Is there discrimination?" by going to an administrative procedure that is effective and fair to both employers and employees while it provides useful avenues of supplying relief for employees; and
- (4) Making litigation the exception rather than the rule.

Mr. William Barber, Executive Director of the North Carolina Human Relations Commission, stated that the position of the Human Relations Commission remains as expressed to the previous study committee, with one structural variation. The Commission no longer suggests that local commission offices be used as field offices if the Commission is given the status to deal with companies with fewer than 15 employees. The Commission continues to believe strongly in the need for some form of state law that addresses companies with fewer than 15 workers, and who, therefore are not covered by the federal requirements of Title VII. Mr. Barber suggested that there be some type of law enacted which gives the Human Relations Commission, or some other agency, the ability to address complaints from employees working for such companies.

#### October 14, 1994 Meeting

The Committee convened for a public hearing in order to receive comment on (1) experiences with administrative and/or judicial procedures established to enforce current federal, state, or local anti-discrimination employment laws and (2) State employment

discrimination laws and propose changes that may better serve its citizens. Twelve speakers presented expressed the following concerns, observations, and suggestions:

1. Licensure for counsellors and psychologists are handled by two different licensing boards and treated separately when the training, services rendered, and clients are the same.
2. What is the role of the Attorney General's Office in representing state agencies in disciplinary or other employment proceedings against state employees?
3. Management has adequate representation in the Attorney General's office staff while the average employee usually does not, and is therefore, at a distinct disadvantage.
4. Does the Attorney General's Office provide advice to agency management and to the State Personnel Commission as well? Does this dual role affect the fairness and impartiality of the State Personnel Commission's review of a personnel appeal?
5. Minorities have historically been employed in the lowest salary categories in N.C. state government and to reverse this trend a system of stronger internal controls, personnel oversight and monitoring must be established with some level of enforcement to lessen the potential for systemic discrimination or institutionalized racism in the state government workplace.
6. Is there a problem because the decision of an Administrative Law Judge is not binding?
7. For employees to enforce any of the rights stated in the law, they must have an attorney in order to prevail and many cannot get legal representation because of the cost and length of the process.
8. Why do many agencies have employee grievance and personnel policies which appear to flatly violate state personnel policies?
9. Do the Office of State Personnel and the State Personnel Commission fail to provide adequate oversight of state agencies' personnel practices and policies?.
10. Should the appeal step of going to the State Personnel Commission be eliminated?

11. Should a set of uniform procedures and rights for the handling of personnel grievances be enacted by statute and thus imposed on all state agencies?
12. Minorities are located disproportionately in the lower paying service occupation and have limited access to opportunities in the higher paying professional and management occupations in both the private and public sectors. In order to increase minority and female representation in the higher paying and higher status occupations, public and private policies that open doors which are now closed.

### November 18, 1994 Meeting

The sixth meeting of the Committee was devoted to follow up on several of the areas of concern regarding the grievance appeals process for State employees subject to the State Personnel Act (SPA) which were raised during the public hearing. To that end, representatives from the Office of State Personnel, the Office of the Attorney General, and the Office of Administrative Hearings appeared to respond to the Committee's inquiries.

Mr. Ronald Penny, State Personnel Director, shared the results of visits to agencies and universities around the State, a survey of 2,000 State employees, and responses from focus groups which indicated that the major concern of State employees is compensation. Classification issues, the perception that once in the grievance process employees must distrust everyone in administration, and the length of the grievance process were also concerns voiced by employees.

He explained the role of the State Personnel Commission in contested cases, the process as it involves the Administrative Law Judge from the Office of Administrative Hearings (OAH).

Mr. Penny outlined the work his office has been doing to revamp and improve the grievance process by:

- Establishing a clear, standard process in the agencies;
- Defining the grievance mechanism better;
- Incorporating an alternative dispute resolution option;
- Training grievance committees better;

- Installing a hotline as a toll-free number for employees to call with their concerns; and

- Decreasing the time that grievances last.

Mr. Lars Nance, Director of the Service to State Agencies Division in the Office of the Attorney General, explained that the Attorney General's Office represents any department, agency, commission, or bureau as mandated under G.S. 114-2(2). However, at no time does the same attorney who appears at OAH for the employer also act as the legal advisor for the State Personnel Commission, a capacity which Mr. Nance himself fulfills.

Mr. Nance further explained that a case must go to the State Personnel Commission after a ruling by the Administrative Law Judge because the Office of Administrative Hearings makes a recommended decision as an administrative law body with quasi-judicial power, rather than the power as a court of law. The Constitution would need to be changed to empower that body as a court.

Mr. Julian Mann, Chief Administrative Law Judge for the Office of Administrative Hearings, gave a brief overview of the creation and evolution of that Office. The Office of Administrative Hearings hears cases from a range of state agencies, of which the 196 personnel cases represent approximately ten percent of the entire case load.

He informed the Committee that the Government Performance Audit Committee (GPAC) recommended that the Office of Administrative Hearings have final decision-making authority and addressed this recommendation in Senate Bill 408. That bill modified the procedures concerning final administrative decisions in contested cases heard by the Office of Administrative Hearings. Mr. Mann explained his belief that GPAC was trying to address the length of time it took for cases to move through the process. It was felt that, under the present structure, the process was too lengthy and justice was being denied. GPAC would have liked to reduce that time period to one year.

On the issue of whether a case should go to the State Personnel Commission first and then to the Office of Administrative Hearings, Mr. Mann indicated that a hearing must take place, at some point in the process, to determine the accuracy of the deprivation of property, if a public employee is to be discharged. However, he had no specific recommendation as to where the cases should go first. He did express support for the central panel structure used by 20 other states, when asked what recommendations he might make for his office to run more smoothly.

At the request of Representative Kennedy, Ms. Nellie Riley, Director of the Equal Opportunity Services Division in the Office of State Personnel, presented a brief assessment of OSP initiated changes and improvements in the area of equal

opportunity, which included the development of an evaluation instrument, results and findings from equal opportunity audits in departments, need for adequate staff, and House Bill 1006 implementation efforts.

**December 19, 1994 Meeting**

At its final meeting, the Committee reviewed, modified, and approved the draft report to be submitted to the 1995 General Assembly.



## RECOMMENDATIONS

Based on its initial examination of the Model Employment Termination Act and the continuing exploration of alternative approaches to deal with discrimination in employment, the Study Committee on Employment Procedures makes the following findings and recommendations:

### **Recommendation 1:**

That the 1995 General Assembly continue the study of alternative approaches to deal with discrimination in employment that it may be more closely and thoroughly examined with an eye to developing sound, viable recommendations to address this complex issue. (See Legislative Proposal I)

### **Recommendation 2:**

That the 1995 General Assembly continue the examination of the Model Employment Termination Act so that the related legislation proposed in other states and their experience and problems in examining or implementing similar measures may be thoroughly discussed and considered to gain a better sense of its appropriateness in the State of North Carolina. (See Legislative Proposal I)



APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

**PART I.-----TITLE**

Section 1. This act shall be known as "The Studies Act of 1993".

**PART II.-----LEGISLATIVE RESEARCH COMMISSION**

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

. . . . .

- (3) Alternative Approaches to Deal with Discrimination in Employment -- study continued (H.B. 54 - Kennedy),

. . . . .

- (22) Model Employment Termination Act (H.B. 384 - Beall),

. . . . .

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

. . . .

**PART XI.-----APPROPRIATION FOR STUDIES**

Sec. 11.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by this act.

**PART XII.-----EFFECTIVE DATE**

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

APPENDIX B

H

I

HOUSE BILL 54

Short Title: Employment Discrimination Study.

(Public)

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Sponsors: Representatives Kennedy; Bowie, D. Brown, Burton, Colton, Cummings, Cunningham, Easterling, Fitch, Gist, Green, Hensley, Holt, Judy Hunt, H. Hunter, R. Hunter, Jarrell, Jeffus, McAllister, Michaux, Oldham, Stamey, Wainwright, and Wright.

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Referred to: Rules, Calendar, and Operations of the House.

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February 4, 1993

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION  
3 TO CONTINUE A STUDY OF ALTERNATIVE APPROACHES TO DEAL  
4 WITH DISCRIMINATION IN EMPLOYMENT.  
5                   Whereas, the Legislative Research Commission created a Committee  
6 on Alternative Approaches to Deal with Discrimination in Employment in Part  
7 II, Section 2.1(13), of Chapter 754 of the 1991 Session Laws; and  
8                   Whereas, the Legislative Research Commission authorized the  
9 Committee to study the desirability of various approaches that might be taken  
10 in State law to deal with discrimination in employment, including but not  
11 limited to enacting the contents of federal antidiscrimination legislation and  
12 empowering the Human Relations Commission to enforce those provisions; and  
13                   Whereas, the Committee on Alternative Approaches to Deal with  
14 Discrimination in Employment has determined the issues involved are too  
15 complex to fully analyze and make informed recommendations to the 1993  
16 General Assembly and that additional study and review is necessary; Now,  
17 therefore,  
18 The General Assembly of North Carolina enacts:  
19                   Section 1. The Legislative Research Commission is authorized to  
20 appoint a Committee to continue a study of Alternative Approaches to Deal  
21 with Discrimination in Employment.  
22                   Sec. 2. The Committee shall be composed of 14 members: seven to  
23 be appointed by the Speaker of the House of Representatives and seven to be  
24 appointed by the President Pro Tempore of the Senate. The Speaker of the

1 House and the President Pro Tempore of the Senate shall each designate a  
2 cochair from among their appointees. Either cochair may call the first meeting  
3 of the Committee. Vacancies shall be filled in the same manner as the original  
4 appointments were made.

5           Sec. 3. The Committee shall study the desirability of various  
6 alternative approaches that might be taken in State law to deal with  
7 discrimination in employment, including but not limited to enacting the  
8 contents of federal antidiscrimination legislation and empowering the Human  
9 Relations Commission to enforce those provisions.

10           Sec. 4. With the approval of the Legislative Services Commission,  
11 professional and clerical staff of the Legislative Services Office shall be  
12 available to the Committee and the Committee may meet in the State  
13 Legislative Building or the Legislative Office Building.

14           Sec. 5. Members of the Committee who are members of the  
15 General Assembly shall receive subsistence and travel allowances as provided  
16 by G.S. 120-3.1. Members who are State officers or employees shall receive  
17 subsistence and travel allowances as provided by G.S. 138-6. All other  
18 members shall receive per diem, subsistence, and travel allowances as provided  
19 by G.S. 138-5.

20           Sec. 6. Upon the request of the Committee, any State department,  
21 agency, institution, or officer shall provide any information available to them  
22 and cooperate to the fullest extent.

23           Sec. 7. The Committee may report its findings, together with any  
24 recommended legislation, to the 1994 Session of the 1993 General Assembly,  
25 to the 1995 General Assembly, or to both.

26           Sec. 8. This act is effective upon ratification.

27

HOUSE BILL 384

Short Title: Employment Termination Study.

(Public)

Sponsors: Representatives Beall; Colton, Jenkins, and Ramsey.

Referred to: Rules, Calendar, and Operations of the House.

March 3, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE MODEL EMPLOYMENT TERMINATION ACT.

Whereas, North Carolina has followed the "Employment at Will Doctrine," which states that an employer may discharge an employee for a good reason, for a bad reason, or for no reason at all; and

Whereas, despite recent qualifications of caselaw and statute prohibiting discharges for certain "bad reasons," North Carolina still generally adheres to the "Employment at Will Doctrine"; and

Whereas, many noncontractual employees are left unprotected from wrongful discharge; and

Whereas, the National Conference of Commissioners on Uniform State Laws adopted in August 1991 and recommended to the legislatures of states the "Model Employment Termination Act," a bill which strikes a compromise between employers and employees similar to the compromise that undergirds Workers' Compensation: The employee gives up the right to sue for pain-and-suffering and punitive damages and gets a remedy of reinstatement or severance pay if discharged for other than good cause, and the employer gives up the right to discharge an employee arbitrarily but gets alleviation of the fear of multimillion dollar lawsuits; and

Whereas, the distinguished record of the National Conference of Commissioners of Uniform State Laws commends to North Carolina the study of this proposed solution to the issue of employment termination; Now, therefore:

The General Assembly of North Carolina enacts:

1           Section 1. The Legislative Research Commission may study issues related to  
2 the Model Employment Termination Act, which was adopted in August 1991 by the  
3 National Conference of Commissioners on Uniform State Laws.

4           Sec. 2. The issues the Legislative Research Commission may study include,  
5 but are not limited to, the following:

6           (1) The current state of the common law with regard to the right of  
7 employees in North Carolina to be free from wrongful discharge,  
8 including recent caselaw trends limiting the "Employment at Will  
9 Doctrine";

10          (2) The statutory protections for North Carolina employees from wrongful  
11 discharge;

12          (3) The protections against wrongful discharge provided by other states;

13          (4) The impact that the protections in the Model Employment  
14 Termination Act may have on the welfare of employees and  
15 employers; and

16          (5) The adaptation of the Model Employment Termination Act to North  
17 Carolina.

18          Sec. 3. The Legislative Research Commission may make its  
19 recommendations and submit an interim report to the 1993 General Assembly, Regular  
20 Session 1994, and may make a final report to the 1995 General Assembly.

21          Sec. 4. This act is effective upon ratification.  
22  
23

APPENDIX C

**MEMBERSHIP OF LRC EMPLOYMENT PROCEDURES COMMITTEE  
1993 - 1994**

**LRC MEMBER:** Sen. Austin M. Allran  
P.O. Box 2907  
Hickory NC 28603  
(704)324-5200

**President Pro Tempore's Appointments**

Sen. Wilbur P. Gulley, Cochair  
4803 Montvale Drive  
Durham, NC 27705  
(919)683-1584

Mr. Jonathan Harkavy  
101 S. Elm Street  
Greensboro, NC 27401

Sen. David Hoyle  
P.O. Box 2494  
Gastonia, NC 28053  
(704)867-0822

Sen. R. L. Martin  
P.O. Box 387  
Bethel, NC 27812  
(919)825-4361

Sen. Jim Richardson  
1739 Northbrook Drive  
Charlotte, NC 28216  
(704)399-1555

Sen. Daniel Simpson  
P.O. Drawer 1329  
Morganton, NC 28655  
(704)437-9744

Mr. Jon Wallas  
2126 Norton Road  
Charlotte, NC 28207

**Staff:**

**Speaker's Appointments**

Rep. Annie B. Kennedy, Cochair  
3727 Spaulding Drive  
Winston Salem, NC 27105  
(910)723-0007

Mr. William Barber  
Elks Building, 2nd Floor  
121 W. Jones Street  
Raleigh, NC 27603

Rep. Charles M. Beall  
Route 3, Box 322  
Clyde, NC 28721-9542  
(704)627-2423

Rep. William A. Burton, III  
9 Woodcreek Court  
Greensboro, NC 27406  
(910)272-8587

Rep. Michael P. Decker  
5550 Davis Road, Apt. 3  
Walkertown, NC 27051  
(910)744-5202

Rep. Herman C. Gist  
503 High Street  
Greensboro, NC 27406  
(910)274-0701

Rep. Hugh A. Lee  
Route 3, Box 445  
Rockingham, NC 28379  
(910)895-2112

**Clerk:**

**Ms. Sandra Timmons**  
**Research Division**  
**(919)733-2578**

**Ms. Carol Resar**  
**Rm. 521 Legislative Office Bldg**  
**(919)733-5655**

APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

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RP-94J-001

**THIS IS A DRAFT AND NOT READY FOR INTRODUCTION.**

Short Title: Employment Procedures Study.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION  
3 TO CONTINUE A STUDY OF EMPLOYMENT PROCEDURES.  
4           Whereas, the Legislative Research Commission created a Committee  
5 on Employment Procedures in Part II, Sections 2.1(3) and (22) of the 2nd  
6 Edition of House Bill 1319 of the 1993 Session; and  
7           Whereas, the Legislative Research Commission authorized the  
8 Committee to study the desirability of various approaches that might be taken  
9 in State law to deal with discrimination in employment, including but not  
10 limited to enacting the contents of federal antidiscrimination legislation and  
11 empowering the Human Relations Commission to enforce those provisions; and  
12           Whereas, North Carolina follows the employment-at-will doctrine  
13 despite recent qualifications of case law and statute prohibiting discharges for  
14 certain "bad reasons," and leaving many contractual employees unprotected  
15 from wrongful discharge; and  
16           Whereas, the Committee on Employment Procedures has  
17 determined the issues involving alternative approaches to deal with  
18 discrimination in employment and the Model Employment Termination Act are  
19 too complex to fully analyze and make informed recommendations to the 1995

1 General Assembly and that additional study and review is necessary; Now,  
2 therefore,

3 The General Assembly of North Carolina enacts:

4           Section 1. The Legislative Research Commission is authorized to  
5 appoint a Committee to continue a study of Employment Procedures to include  
6 alternative approaches to deal with discrimination in employment and the  
7 Model Employment Termination Act.

8           Sec. 2. The Committee shall be composed of 16 members: eight to  
9 be appointed by the Speaker of the House of Representatives two of whom  
10 shall represent the respective management and labor segments of private  
11 industry and eight to be appointed by the President Pro Tempore of the Senate  
12 two of whom shall represent the respective management and labor segments of  
13 private industry. The Speaker of the House and the President Pro Tempore of  
14 the Senate shall each designate a cochair from among their appointees. Either  
15 cochair may call the first meeting of the Committee. Vacancies shall be filled  
16 in the same manner as the original appointments were made.

17           Sec. 3. The Committee shall study the desirability of various  
18 alternative approaches that might be taken in State law to deal with  
19 discrimination in employment, including but not limited to enacting the  
20 contents of federal antidiscrimination legislation and empowering the Human  
21 Relations Commission to enforce those provisions, and shall continue to review  
22 the employee grievance process for employees subject to the State Personnel  
23 Act.

24           Sec. 4. The Committee shall continue the examination of the Model  
25 Employment Termination Act, including but not limited to a review of  
26 proposed legislation and related statutory protections in other sates.

27           Sec. 5. With the approval of the Legislative Services Commission,  
28 professional and clerical staff of the Legislative Services Office shall be  
29 available to the Committee and the Committee may meet in the State  
30 Legislative Building or the Legislative Office Building.

31           Sec. 6. Members of the Committee who are members of the  
32 General Assembly shall receive subsistence and travel allowances as provided  
33 by G.S. 120-3.1. Members who are State officers or employees shall receive  
34 subsistence and travel allowances as provided by G.S. 138-6. All other  
35 members shall receive per diem, subsistence, and travel allowances as provided  
36 by G.S. 138-5.

37           Sec. 7. Upon the request of the Committee, any State department,  
38 agency, institution, or officer shall provide any information available to them  
39 and cooperate to the fullest extent.

40           Sec. 8. The Committee may report its findings, together with any  
41 recommended legislation, to the 1996 Session of the 1995 General Assembly,  
42 to the 1997 General Assembly, or to both.

43           Sec. 9. This act is effective upon ratification.

